

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

APL CO. PTE., LTD. and AMERICAN	)	Case No. 10-0432 SC
PRESIDENT LINES, LTD.,	)	
	)	ORDER GRANTING MOTION FOR
Plaintiffs,	)	<u>DEFAULT JUDGMENT</u>
	)	
v.	)	
	)	
GLORY EXPRESS, INC.,	)	
	)	
Defendant.	)	
	)	

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**I. INTRODUCTION**

Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd. (collectively, "Plaintiffs") seek entry of Default Judgment against Defendant Glory Express, Inc. ("Defendant"). Docket No. 9 ("Motion"). Plaintiffs allege Defendant breached two maritime service contracts by failing to meet minimum cargo commitments. See Docket No. 1 ("Compl."), ¶¶ 6-28. Having considered the papers submitted by Plaintiffs, the Court concludes that entry of Default Judgment against Defendant is appropriate, and GRANTS Plaintiffs' Motion.

**II. BACKGROUND**

Plaintiffs are ocean carriers of goods for hire between international ports. Compl. ¶ 6. American President Lines, Ltd.

1 is a Delaware corporation moving cargo to and from the People's  
2 Republic of China, Japan, Taiwan, and Mexico; APL Co. Pte., Ltd. is  
3 an affiliated Singapore corporation moving cargo to and from other  
4 locations. See Vargas Decl., Ex. A ("2005 Contract") § 1(d).<sup>1</sup> On  
5 or about January 29, 2005, Plaintiffs entered into a written  
6 service contract with Defendant in which Plaintiffs agreed to  
7 transport Defendant's cargo from the United States to the Republic  
8 of Korea. Id. ¶ 7. The 2005 Contract included a Minimum Volume  
9 Commitment ("MVC") requiring Defendant to tender a minimum of  
10 twenty-five "freight equivalent units" ("FEUs") during the contract  
11 term. Compl. ¶¶ 8-9; 2005 Contract § 2(b), App. B § 4. The  
12 Contract also included a liquidated damages or "dead freight"  
13 provision, requiring Defendant to pay "deadfreight in the amount of  
14 \$350 for each FEU by which the MVC . . . exceeds the volume  
15 actually tendered." Id. ¶ 10; 2005 Contract § 3(6).

16 Plaintiffs allege that during the term of the 2005 Contract,  
17 Defendant tendered only seventeen FEUs of cargo to Plaintiffs --  
18 eight fewer FEUs than the MVC -- thus obligating Defendant to pay  
19 Plaintiffs liquidated damages of \$2800 (eight times \$350).  
20 Id. ¶ 12; Vargas Decl. ¶ 6. Plaintiffs invoiced Defendant for  
21 \$2800, see Vargas Decl., Ex. C ("First Invoice"), but Defendant  
22 failed to pay within thirty days as required by the Contract.  
23 Compl. ¶¶ 13-14; Vargas Decl. ¶ 7. Defendant did not respond with  
24 payment upon further demands by Plaintiffs. Id.

25 Plaintiffs and Defendant entered into a second written service  
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27 <sup>1</sup> Jose Alonso Vargas ("Vargas"), a financial analyst in Plaintiffs'  
28 accounts receivable and collections department, has filed a  
declaration in support of the Motion. Docket No. 10.

1 contract on December 4, 2007. Id. ¶ 15; Vargas Decl., Ex. B  
2 ("2007 Contract"). This Contract included identical MVC and dead  
3 freight provisions. Compl. ¶¶ 16-18; 2007 Contract § 2(b), App. B  
4 § 4. Plaintiffs allege that Defendant tendered only one FEU during  
5 the term of this Contract -- twenty-four fewer than the MVC -- thus  
6 obligating Defendant to pay Plaintiffs \$8400 in liquidated damages  
7 (twenty-four times \$350). Id. ¶¶ 19-20; Vargas Decl. ¶ 10.  
8 Plaintiffs invoiced Defendant for \$8400, see Vargas Decl., Ex. D  
9 ("Second Invoice"), but Defendant never paid. Compl. ¶¶ 21-22;  
10 Vargas Decl. ¶ 11.

11 Both contracts included a provision in which parties consented  
12 to personal jurisdiction in the United States District Court for  
13 the Northern District of California. 2005 Contract § 4(b);  
14 2007 Contract § 4(b). Both contracts also included a clause  
15 stating that "[t]he costs and expenses of the arbitration or  
16 litigation (including reasonable attorney's fees and costs) shall  
17 be borne by the non-prevailing party." 2005 Contract § 4(a);  
18 2007 Contract § 4(a).

19 Plaintiffs' Complaint was filed on January 29, 2010. See  
20 Compl. On February 22, 2010, a registered California process  
21 server served the Summons and Complaint on Grant Lee ("Lee"), a  
22 person authorized by Defendant to accept service on its behalf, at  
23 Defendant's corporate offices in Torrance, California. See Docket  
24 No. 5 ("Proof of Service"); deLangis Decl. ¶ 3.<sup>2</sup> Defendant did not  
25 respond. The Clerk of the Court entered Default against Defendant  
26 on April 9, 2010. Docket No. 6. Defendant has not since appeared

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27 <sup>2</sup> Mark deLangis ("deLangis"), counsel for Plaintiffs, has filed a  
28 declaration in support of the Motion. Docket No. 11.

1 in this action.

2 Plaintiffs seek a Default Judgment of \$11,200 in liquidated  
3 damages for both contracts, plus \$350 in litigation costs.

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5 **III. LEGAL STANDARD**

6 After entry of a default, the Court may enter a default  
7 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do  
8 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092  
9 (9th Cir. 1980), is guided by several factors.

10 As a preliminary matter, the Court must "assess the adequacy  
11 of the service of process on the party against whom default is  
12 requested." Bd. of Trs. of the N. Cal. Sheet Metal Workers v.  
13 Peters, No. 00-0395, 2000 U.S. Dist. LEXIS 19065, at \*2 (N.D. Cal.  
14 Jan. 2, 2001). If the Court determines that service was  
15 sufficient, it may consider the following factors in its decision  
16 on the merits of a motion for default judgment:

17 (1) the possibility of prejudice to the  
18 plaintiff, (2) the merits of plaintiff's  
19 substantive claim, (3) the sufficiency of the  
20 complaint, (4) the sum of money at stake in the  
21 action; (5) the possibility of a dispute  
22 concerning material facts; (6) whether the  
23 default was due to excusable neglect, and (7)  
24 the strong policy underlying the Federal Rules  
25 of Civil Procedure favoring decisions on the  
26 merits.

23 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The  
24 general rule of law is that upon default the factual allegations of  
25 the complaint, except those relating to the amount of damages, will  
26 be taken as true." Geddes v. United Fin. Group, 559 F.2d 557,  
27 560 (9th Cir. 1977). Therefore, for the purposes of this Motion,  
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1 the Court accepts as true the facts as presented in the Complaint.

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3 **IV. DISCUSSION**

4 **A. Service of Process**

5 Defendant is a corporation. Compl. ¶ 5. Accordingly, service  
6 of process is governed by Federal Rule of Civil Procedure 4(h).  
7 Under Rule 4(h), a corporation may be served "by delivering a copy  
8 of the summons and of the complaint to an officer, a managing or  
9 general agent, or any other agent authorized by appointment or by  
10 law to receive service of process." Fed. R. Civ. P. 4(h)(1)(B).  
11 Plaintiffs have submitted a declaration from a process server  
12 stating that service was effected by personal delivery of the  
13 Summons and Complaint to Lee, Defendant's authorized agent for  
14 service, at Defendant's address in Torrance, California. See Proof  
15 of Service. Accordingly, the Court finds service of process on  
16 Defendant to be proper.

17 **B. Merits of the Motion**

18 Accepting the allegations in the Complaint as true, as it  
19 must, the Court finds that the Eitel factors favor default  
20 judgment.

21 Plaintiffs would be prejudiced absent entry of default  
22 judgment. Defendant's failure to meet the contractually obligated  
23 MVC triggered the liquidated damages provisions in the contracts.  
24 Plaintiffs have properly served Defendant with notice of this  
25 action, and Defendant has chosen not to respond. Parties consented  
26 to personal jurisdiction in the Northern District of California in  
27 the 2005 and 2007 contracts. 2005 Contract § 4(b); 2007 Contract  
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1 § 4(b). Plaintiffs would be left without a legal remedy if it were  
2 denied an entry of default judgment.

3 Plaintiffs have properly alleged the necessary elements for  
4 their causes of action in its Complaint. Plaintiffs and Defendant  
5 entered into two facially valid contracts; Defendant breached both  
6 by failing to meet the MVC, triggering the liquidated damages  
7 provisions. The Complaint identifies the contracts at issue (the  
8 January 2005 and December 2007 contracts), the specific instances  
9 of breach (failure to meet the MVC of twenty five FEUs per contract  
10 term), and the appropriate remedy (liquidated damages of \$350 for  
11 each FEU by which the MVC exceeds the volume actually tendered).  
12 The liquidated damages provisions of \$350 per FEU are not so  
13 unreasonable as to render the contracts unenforceable. See  
14 Cal. Civ. Code § 1671(b) ("a provision in a contract liquidating  
15 the damages for the breach of the contract is valid unless the  
16 party seeking to invalidate the provision establishes that the  
17 provision was unreasonable under the circumstances existing at the  
18 time the contract was made").<sup>3</sup> Accordingly, Plaintiffs' Complaint  
19 is sufficient.

20 The amount of money at stake in this action -- \$11,200 plus  
21 \$350 in litigation costs -- is not so great as to preclude default  
22 judgment. The amount at issue is also unambiguous and easily  
23 calculable in light of the relevant contract provisions.

24 There is some potential for a dispute concerning material  
25 facts in this action; in particular, whether Defendant failed to

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26 <sup>3</sup> Maritime contract actions are governed by state law, provided  
27 state law does not clearly conflict with federal maritime law. See  
28 Aqua-Marine Constructors, Inc. v. Banks, 110 F.3d 663, 667-68 (9th  
Cir. 1997).

1 meet its MVC of twenty-five FEUs per contract term. However,  
2 Vargas declares, under penalty of perjury, that Defendant failed to  
3 tender the required number of FEUs. Vargas Decl. ¶¶ 6, 10. Thus  
4 this factor favors default judgment.

5 In addition, no facts suggest Defendant's failure to  
6 participate in this action is a case of excusable neglect.  
7 Defendant was served with notice of the present action and did not  
8 participate. See Service of Process. This factor favors entry of  
9 default judgment.

10 Finally, while it is preferable to decide cases on the merits  
11 whenever possible, this preference is not dispositive. Where a  
12 party fails to defend against a complaint, as Defendant has failed  
13 here, Rule 55 authorizes the Court to enter default judgment.  
14 Klopping v. Fireman's Fund, No. 94-2684, 1996 U.S. Dist. LEXIS  
15 1786, at \*10 (N.D. Cal. Feb. 14, 1996).

16 **C. Remedy**

17 Plaintiffs request liquidated damages of \$11,200 plus \$350 in  
18 costs. The Court finds that Plaintiffs' calculation of liquidated  
19 damages to be reasonable and correct in light of the facts alleged  
20 and the terms of the 2005 and 2007 contracts. The contracts also  
21 provide for litigation costs to be paid by the non-prevailing  
22 party. 2005 Contract § 4(a); 2007 Contract § 4(a). While  
23 Plaintiffs have not provided an itemized account of litigation  
24 costs incurred, the Court finds the \$350 sought is reasonable given  
25 the \$350 filing fee imposed by 28 U.S.C. § 1914(a).

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1 **V. CONCLUSION**

2 The Court GRANTS Plaintiffs' Motion for Default Judgment. The  
3 Court enters Default Judgment against Defendant Glory Express,  
4 Inc., and in favor of Plaintiffs APL Co. Pte., Ltd. and American  
5 President Lines, Ltd., in the amount of \$11,550. The Court also  
6 orders Plaintiffs to serve, by certified mail, a copy of this Order  
7 and the accompanying Default Judgment on Defendant's agent  
8 authorized to receive service of process, Grant Lee, at the address  
9 provided in the Proof of Service. Plaintiffs must file a Proof of  
10 Service within seven (7) days of this Order.

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12 IT IS SO ORDERED.

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14 Dated: June 9, 2010

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16 UNITED STATES DISTRICT JUDGE  
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